

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

First named inventor: RIZVI, Syed

Application No.: 10/780,661

Art Unit: 1611

Filed: 02/19/2004

Examiner: GHALI, Isis A.

Title:

Feminine Wipe for Symptomatic Treatment of Vaginitis

Attention: Office of Petitions

**Mail Stop Petition**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional

**1. Petition Fee**

- ☒ Small entity-fee \$810 (37 CFR 1.17(m)). Application claims small entity status. See 37 CFR 1.27.
- ☐ Other than small entity-fee \$ (37 CFR 1.17(m))

**2. Reply and/or fee**

- A. The reply and/or fee to the above-noted Office action in the form of Amendment & RCE (filed 6/2/2010) (identify type of reply):

- ☒ has been filed previously on
- ☒ is enclosed herewith.

- B. The issue fee and publication fee (if applicable) of \$

- ☐ has been paid previously on
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

FEB 01 2011

From: The AVAD Group Fax: (800) 398-0932

To: James Surber

Fax: +1 (571) 273-8300

Page 5 of 26 2/1/2011 4:18

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE  
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## 3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

/James Surber/

Signature

February 1, 2011

Date

James Surber

Type or Printed name

48381

Registration Number, If applicable

P.O. Box 4442

Address

314.910.2390

Telephone Number

Chesterfield, MO 63006

Address

- Enclosures:
- ☒ Fee Payment
  - ☒ Reply
  - ☐ Terminal Disclaimer Form
  - ☐ Additional sheets containing statements establishing unintentional delay
  - ☒ Other: The RCE fee under 37 CFR Section 1.114

**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

- ☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.
- ☒ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

February 1, 2011  
Date

/James Surber/

Signature

James Surber

Typed or printed name of person signing certificate

[Page 2 of 2]

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**FEB 01 2011****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***In re* Application of:

Syed Rizvi

Serial No.: 10/780,661

Filed: February 19, 2004

For: **Feminine Wipe for Symptomatic  
Treatment of Vaginitis**

Examiner: Ghali, Isis A.

Art Unit: 1615

**TRANSMITTAL AND REMARKS IN SUPPORT OF**  
**PETITION FOR REVIVAL UNDER RULE 1.137(b)****Mail Stop Petition**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Enclosed herewith please find a "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR §1.137(b)," along with (1) the required petition fee of \$810 under 37 CFR §1.17(m) and (2) the missing fee of \$405 under 37 CFR §1.17(e), which was *unintentionally* omitted from the RCE filed on June 2, 2010.

\* \* \*

In the present application, an Advisory Action was mailed on May 20, 2010. In the Advisory Action, the Examiner "checked" Box 1(b) of such Action, when Box 1(a) should have been "checked." As outlined in Applicant's June 2, 2010 Response to the Advisory Action, Applicant confirmed such error – as well as the total Extension of Time fees that would be due in a response to such Advisory Action – with the Supervising Examiner and other personnel at the USPTO. (**Attachment A**).

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Although Applicant deemed the very issuance of the Advisory Action to be improper (in view of, among other things, new issues that the Examiner had decided to raise after *four* preceding office actions, based on claim limitations that were present throughout prosecution), Applicant filed its June 2, 2010 Response along with the necessary Extension of Time fees that were due (per the undersigned counsel's discussion with the Supervising Examiner and other personnel at the USPTO). The June 2, 2010 Response addressed the Examiner's last round of issues – and should have placed the then remaining Claims in a condition for allowance. Indeed, the Examiner's last round of rejections were addressed by simply deleting the problematic Claims, such that the remaining Claims would be allowed to issue.

The June 2, 2010 Response also required that a Request for Continued Examination (RCE) be filed, since the prior Office Action had been made final. The RCE was filed along with the June 2, 2010 Response. Unfortunately, however, although the correct Extension of Time fees were paid with the June 2, 2010 Response, Applicant *unintentionally and inadvertently* forgot to submit the necessary fee for the RCE under 37 CFR §1.17(e). By this time, the period of time for responding to the USPTO's last Office Action had expired, which eventually resulted in the USPTO issuing its December 17, 2010 Notice of Abandonment. Examiner Ghali contacted the undersigned counsel by telephone on December 7, 2010 to notify Applicant that the application would be designated abandoned, at which time the undersigned counsel advised the Examiner that Applicant would be filing a "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR §1.137(b)," following the USPTO's Notice of Abandonment, which was subsequently issued on December 17, 2010.

Accordingly, Applicant hereby respectfully requests that the present application be revived and, in view of the Amendments and Remarks submitted in the June 2, 2010 Response, that Claims 1, 5, and 8-10 be allowed to issue.

Respectfully Submitted,

/James Surber/

Reg. No. 48,381

P.O. Box 4442

Chesterfield, MO 63006

T: 314.910.2390

Dated: February 1, 2011

**ATTACHMENT A**

Doc code: RCEX

Doc description: Request for Continued Examination (RCE)

PTO/SB/30EFS (07-09)

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# **REQUEST FOR CONTINUED EXAMINATION(RCE)TRANSMITTAL** **(Submitted Only via EFS-Web)**

Application Number	10780661	Filing Date	2004-02-19	Docket Number (if applicable)		Art Unit	1615
First Named Inventor	Syed Rizvi			Examiner Name	Ghali, Isis A.		

This is a **Request for Continued Examination (RCE)** under 37 CFR 1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. The Instruction Sheet for this form is located at [WWW.USPTO.GOV](http://WWW.USPTO.GOV)

## **SUBMISSION REQUIRED UNDER 37 CFR 1.114**

Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on \_\_\_\_\_

☐ Other \_\_\_\_\_

☒ Enclosed

☒ Amendment/Reply

☐ Information Disclosure Statement (IDS)

☐ Affidavit(s)/ Declaration(s)

☐ Other \_\_\_\_\_

## **MISCELLANEOUS**

☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of months \_\_\_\_\_ (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

☐ Other \_\_\_\_\_

## **FEES**

☐ The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

☐ The Director is hereby authorized to charge any underpayment of fees, or credit any overpayments, to Deposit Account No \_\_\_\_\_

## **SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED**

☒ Patent Practitioner Signature

☐ Applicant Signature

EFS - Web 2.1.15

Doc code: RCEX

Doc description: Request for Continued Examination (RCE)

PTO/SB/30EFS (07-09)

Approved for use through 07/31/2012. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Signature of Registered U.S. Patent Practitioner			
Signature	/James Surber/	Date (YYYY-MM-DD)	2010-06-02
Name	James Surber	Registration Number	48381

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450.

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## Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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### Electronic Patent Application Fee Transmittal

<b>Application Number:</b>	10780661			
<b>Filing Date:</b>	19-Feb-2004			
<b>Title of Invention:</b>	Feminine wipe for symptomatic treatment of vaginitis			
<b>First Named Inventor/Applicant Name:</b>	Syed Rizvi			
<b>Filer:</b>	James B. Surber			
<b>Attorney Docket Number:</b>	976			
Filed as Small Entity				
<b>Utility under 35 USC 111(a) Filing Fees</b>				
<b>Description</b>	<b>Fee Code</b>	<b>Quantity</b>	<b>Amount</b>	<b>Sub-Total in USD(\$)</b>
<b>Basic Filing:</b>				
<b>Pages:</b>				
<b>Claims:</b>				
<b>Miscellaneous-Filing:</b>				
<b>Petition:</b>				
<b>Patent-Appeals-and-Interference:</b>				
<b>Post-Allowance-and-Post-Issuance:</b>				
<b>Extension-of-Time:</b>				
Extension - 3 months with \$245 paid	2253	1	310	310

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Miscellaneous:				
Total in USD (\$)				310

**Electronic Acknowledgement Receipt****RECEIVED  
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<b>EFS ID:</b>	7728731
<b>Application Number:</b>	10780661
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	2178
<b>Title of Invention:</b>	Feminine wipe for symptomatic treatment of vaginitis
<b>First Named Inventor/Applicant Name:</b>	Syed Rizvi
<b>Customer Number:</b>	67911
<b>Filer:</b>	James B. Surber
<b>Filer Authorized By:</b>	
<b>Attorney Docket Number:</b>	976
<b>Receipt Date:</b>	02-JUN-2010
<b>Filing Date:</b>	19-FEB-2004
<b>Time Stamp:</b>	13:54:07
<b>Application Type:</b>	Utility under 35 USC 111(a)

**Payment information:**

Submitted with Payment	yes
Payment Type	Credit Card
Payment was successfully received in RAM	\$310
RAM confirmation Number	169
Deposit Account	
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**File Listing:**

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
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1		Response.pdf	115389 aaf5f1b3a889562a621db1f9b9da1cace2318a7	yes	9
<b>Multipart Description/PDF files in .zip description</b>					
<b>Document Description</b>		<b>Start</b>	<b>End</b>		
Amendment After Final		1	8		
Extension of Time		9	9		
<b>Warnings:</b>					
<b>Information:</b>					
2	Request for Continued Examination (RCE)	RCE.pdf	36145 438db260a16c1c005b4255f342fb4b839c9a2d3	no	3
<b>Warnings:</b>					
This is not a USPTO supplied RCE SB30 form.					
<b>Information:</b>					
3	Fee Worksheet (PTO-875)	fee-info.pdf	29913 3aff716d93a5f2c0348db13006e3c131f03594e	no	2
<b>Warnings:</b>					
<b>Information:</b>					
<b>Total Files Size (in bytes):</b>			181447		
<p>This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.</p> <p><b><u>New Applications Under 35 U.S.C. 111</u></b>          If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.</p> <p><b><u>National Stage of an International Application under 35 U.S.C. 371</u></b>          If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.</p> <p><b><u>New International Application Filed with the USPTO as a Receiving Office</u></b>          If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.</p>					

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

*In re* Application of:

Syed Rizvi

Serial No.: 10/780,661

Filed: February 19, 2004

**For: Feminine Wipe for Symptomatic Treatment of Vaginitis**

Examiner: Ghali, Isis A.

Art Unit: 1615

## AMENDMENT & RESPONSE TO ADVISORY ACTION

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

In response to the Advisory Action mailed May 20, 2010, Applicant requests that the claims in the above-identified application be amended as set forth on page 2 of this paper. In view of such Amendments and the Remarks below, which begin on page 5 of this paper, Applicant respectfully requests that the Examiner allow Claims 1, 5, and 8-14.

A payment is submitted herewith for the Request for Continued Examination, which is filed herewith under 37 C.F.R. §1.114, and the Request for Extension of Time filed under 37 C.F.R. §1.136(a).

Respectfully submitted,

By: /James B. Surber/  
Registration No. 48,381

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AMENDMENTS TO THE CLAIMS

Please amend the Claims as follows:

1. (Previously Presented) A device for neutralizing odors caused by vaginitis, which consists of an absorbent substrate impregnated with a liquid composition consisting of 4-6 percent by volume of saccharomyces ferment, 0.4-0.6 percent by volume of poly(oxy-1,2-ethanediyl), alpha-(4-(1,1,3,3 tetramethylbutyl)phenyl)-omega-hydroxy-, 0.15-0.25 percent by volume of potassium sorbate, 0.15-0.25 percent by volume of cetylpyridinium chloride, 0.1 percent by volume of disodium EDTA, 0.04-0.06 percent by volume of lactic acid, and 92-96 percent by volume of water.

2-4. (Cancelled).

5. (Previously Presented) A method for neutralizing odors caused by vaginitis which consists of applying to the effected area of the body a liquid composition consisting of 4-6 percent by volume of saccharomyces ferment, 0.4-0.6 percent by volume of poly(oxy-1,2-ethanediyl), alpha-(4-(1,1,3,3 tetramethylbutyl)phenyl)-omega-hydroxy-, 0.15-0.25 percent by volume of potassium sorbate, 0.15-0.25 percent by volume of cetylpyridinium chloride, 0.1 percent by volume of disodium EDTA, 0.04-0.06 percent by volume of lactic acid, and 92-96 percent by volume of water.

6-7. (Cancelled).

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8. (Original) The method of claim 5 wherein said liquid composition is impregnated on an absorbent substrate.
9. (Original) The method of claim 8 wherein said absorbent substrate is a fibrous wipe.
10. (Original) The method of claim 5 wherein said effected area to which the liquid composition is applied is the human female genitalia.
11. (New) A method for neutralizing odors caused by vaginitis which consists of applying to the effected area of the body a liquid composition consisting of 5 percent by volume of saccharomyces ferment, 0.5 percent by volume of poly(oxy-1,2-ethanediyl), alpha-(4-(1,1,3,3 tetramethylbutyl)phenyl)-omega-hydroxy-, 0.2 percent by volume of potassium sorbate, 0.2 percent by volume of cetylpyridinium chloride, 0.1 percent by volume of disodium EDTA, 0.05 percent by volume of lactic acid, and 93.95 percent by volume of water.
12. (New) The method of claim 11 wherein said liquid composition is impregnated on an absorbent substrate.
13. (New) The method of claim 12 wherein said absorbent substrate is a fibrous wipe.



14. (New) The method of claim 11 wherein said effected area to which the liquid composition is applied is human female genitalia.

### **REMARKS**

In the current Advisory Action, the Examiner (1) seemingly misstates applicable law, (2) ignores the express disclosure of the present application, and (3) after *four* separate office actions, raises an alleged need to reconsider whether the recited *ranges* are supported by the present specification (which even a cursory review of the specification indicates that such ranges are indeed supported). A summary of the Examiner's statements, and Applicant's response thereto, is set forth below.

### **Period for Reply & Extension of Time**

In the current Advisory Action, the Examiner "checked" Box 1(b) of the Advisory Action, when Box 1(a) should have been "checked" See MPEP 706.07(f)I(D) ("Where the final Office action sets a variable reply period as set forth in paragraph (A) above, and applicant does NOT file a complete first reply to the final Office action within 2 months, examiners should check box 1(a) at the top portion of the Advisory Action form, PTOL-303."

The undersigned counsel attempted to contact the Examiner by telephone on several occasions (to determine the applicable period for reply, since Box 1(a) was left blank in the Advisory Action), but was not able to reach her. On June 2, 2010, the undersigned contacted the Supervising Examiner (Sharmila Landau) for the purpose of confirming the applicable period for reply. Ms. Landau confirmed that Box 1(a) should have been "checked," and that a supplemental reply may be filed on or before June 2, 2010 – provided that Applicant obtained another 1-month extension of time (since a 2-month extension of time had already been granted). The undersigned further contacted Ms. Brenda Grey at the U.S. Patent & Trademark Office, who confirmed that the

applicable fees due, for the additional 1-month extension, will be the fees required for the entire three month extension of time (\$555), less the fees already paid for the two-month extension (\$245) – making \$310 the requisite amount for the additional one-month extension of time.

**Response to Statements in Advisory Action**

1. **The Examiner states: “The claimed amount of 0.1% by vol. disodium EDTA was not presented before and will require further search and consideration.”**

**RESPONSE:** The Examiner fails to explain why an essentially narrowing amendment to a claim – which has already been determined to be novel and non-obvious – would “require further search and consideration.” On page 2 of the December 2, 2009 Office Action (the fourth Office Action), the Examiner indicated that the rejections of Claims 4 and 7 under 35 U.S.C. §103 were withdrawn. The Examiner raised two minor issues under §112. The relevant issue was that the Examiner falsely believed that Claims 4 and 7 must precisely recite the elements listed in the Example presented in paragraph [0019] of the present application (and thereby list 0.1% disodium EDTA instead of 0.04 – 0.06%). Although paragraphs [0051] and [0056] of the specification plainly state that “chelators,” including “disodium EDTA,” may be present at 0.04 – 0.06%, Applicant obliged the Examiner’s assertion and amended the required amount of disodium EDTA from 0.04 – 0.06% to 0.1%. Obviously, modifying a component of a claim from a range of concentrations to a precise, single concentration is a narrowing amendment and, therefore, it seems that such amendment should not “require further search and consideration,” as the Examiner curiously contends.

2. **The Examiner states: “Further, the amended claims introduced new matter because the amended claims picture the example of the present specification, however, the example does not present ranges.”**

RESPONSE: Applicant is respectfully unclear on what rule or statute the Examiner is relying upon here. There is no rule or statute that requires a Claim to precisely match an Example presented in a specification. Moreover, the pending Claims have recited ranges during the *past four Office Actions*, yet the Examiner chooses to raise this non-issue at this juncture. In addition, it is not clear what is meant by the Examiner’s reference to “new matter,” insofar as all of the components recited in the pending claims (and the ranges) are expressly described in the present specification.

It is true that Applicant is claiming a specific preferred embodiment and, more particularly, a combination of components vis-à-vis prescribing a narrow range of concentrations of the components listed in the Example of paragraph [0019]. Importantly, however, all of these ranges are expressly recited in subsequent paragraphs [0021] – [0062] of the present application.

3. **The Examiner states: “Picture claims are limited to the recited elements and quantities ... no showing of mixing 0.10% disodium EDTA with any amounts of any ingredients other than that in the example.”**

RESPONSE: Again, what rule or statute is the Examiner relying upon here? A so-called “picture claim” generally refers to a very narrow claim, which is drawn to an Example included in a specification, a commercial embodiment, or other narrowly claimed subject matter. To Applicant’s knowledge, neither Chapter 37 of the Code of Federal Regulations, nor Title 35 of the United States Code, reference any requirement of a so-called “picture claim” to precisely track an Example in a specification (so long as the Claim satisfies 35 U.S.C. §112). The Examiner’s statement – that there is “no showing

of mixing 0.10% disodium EDTA with any amounts of any ingredients other than that in the example” – is an incredibly strained and incorrect reading of what could only be 35 U.S.C. §112.

In this case, each recited component of the pending Claims is identified in the Example of the present specification – and each range that is assigned to such components is expressly described in paragraphs [0021] – [0062] of the present application. This plainly satisfies the requirements of §112.

\* \* \*

In view of the foregoing, Applicant respectfully requests allowance of Claims 1, 5, and 8-10.

#### **New Claims**

Applicant has added new Claim 11, which precisely and exactly tracks the Example found in paragraph [0019]. Based on the Examiner’s statements and reasoning set forth in the recent Advisory Action, new Claim 11 should clearly be allowed. Claims 12-14 have also been added, which depend from new Claim 11.

**Extension of Time Under 37 C.F.R. § 1.136(a)**

Please grant a one-month extension of time for responding to the Final Office Action mailed December 2, 2009. A previous two-month extension has already been granted in the present application. With the requested additional one-month extension, the deadline for a response will be June 2, 2010.

Respectfully submitted,

By: /James B. Surber/  
Registration No. 48,381

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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875				Application or Docket Number 10/780,661		Filing Date 02/19/2004		<input type="checkbox"/> To be Mailed	
APPLICATION AS FILED – PART I									
(Column 1)		(Column 2)		SMALL ENTITY <input checked="" type="checkbox"/> OR		OTHER THAN SMALL ENTITY			
FOR	NUMBER FILED	NUMBER EXTRA		RATE (\$)	FEE (\$)	OR		RATE (\$)	FEE (\$)
<input type="checkbox"/> BASIC FEE (37 CFR 1.16(e), (b), or (c))	N/A	N/A		N/A				N/A	
<input type="checkbox"/> SEARCH FEE (37 CFR 1.16(k), (j), or (m))	N/A	N/A		N/A				N/A	
<input type="checkbox"/> EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A		N/A				N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =		*	X \$ =		OR		X \$ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =		*	X \$ =		OR		X \$ =	
<input type="checkbox"/> APPLICATION SIZE FEE (37 CFR 1.16(s)) If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).									
<input type="checkbox"/> MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))									
* If the difference in column 1 is less than zero, enter "0" in column 2.				TOTAL		OR		TOTAL	
APPLICATION AS AMENDED – PART II									
(Column 1)		(Column 2)		(Column 3)		SMALL ENTITY OR		OTHER THAN SMALL ENTITY	
AMENDMENT	06/02/2010	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE (\$)	ADDITIONAL FEE (\$)	RATE (\$)	ADDITIONAL FEE (\$)
Total (37 CFR 1.16(i))	9	Minus	**	20	= 0	X \$26 =	0	OR	X \$ =
Independent (37 CFR 1.16(b))	3	Minus	***	3	= 0	X \$110 =	0	OR	X \$ =
<input type="checkbox"/> Application Size Fee (37 CFR 1.16(s))								OR	
<input type="checkbox"/> FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))								OR	
TOTAL ADD'L FEE						0		OR	TOTAL ADD'L FEE
(Column 1)		(Column 2)		(Column 3)		SMALL ENTITY OR		OTHER THAN SMALL ENTITY	
AMENDMENT		CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE (\$)	ADDITIONAL FEE (\$)	RATE (\$)	ADDITIONAL FEE (\$)
Total (37 CFR 1.16(i))	*	Minus	**		=	X \$ =		OR	X \$ =
Independent (37 CFR 1.16(b))	*	Minus	***		=	X \$ =		OR	X \$ =
<input type="checkbox"/> Application Size Fee (37 CFR 1.16(s))								OR	
<input type="checkbox"/> FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))								OR	
TOTAL ADD'L FEE								OR	TOTAL ADD'L FEE
* If the entry in column 1 is less than the entry in column 2, write "0" in column 3. ** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20". *** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3". The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.									

Legal Instrument Examiner:  
/FLORENCE R. PATTERSON/

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